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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 David Gonzales,) No. CIV 04-1264-PHX-SMM (GEE)
10 Plaintiff,) **ORDER**
11 vs.)
12 Phoenix Police Department; et al.,)
13 Defendants.)
14 _____)

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16 Pending before the court is a motion to quash subpoena duces tecum filed by KTVK-
17 TV and Executive News Director Scott Diener on April 11, 2006. [doc. # 41]

18 The plaintiff in this action claims his civil rights were violated when the defendants
19 employed excessive force during his arrest and failed to provide prompt medical attention.

20 The case has been referred to Magistrate Judge Edmonds for all pretrial matters
21 pursuant to Local Civil Rule 72.2. Rules of Practice of the U.S. District Court for the District
22 of Arizona.

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24 Discussion

25 On April 3, 2006, the plaintiff served a subpoena duces tecum on KTVK-TV and
26 Executive News Director Scott Diener. (Motion to Quash.) He seeks a copy of the broadcast
27 video “shown on or about November 23, 2004, relating to David Gonzales and City of
28 Phoenix police officers Tim Norton, Todd Trynosky and/or Daniel Latham.” *Id.*

1 In the instant motion, the movants argue this subpoena must be quashed because it
2 fails to overcome the journalist's privilege described in *Shoen v. Shoen*, 48 F.3d 412 (9th Cir.
3 1995). In *Shoen*, the Ninth Circuit held as follows:

4 [W]here information sought is not confidential, a civil litigant is entitled to
5 requested discovery notwithstanding a valid assertion of the journalist's
6 privilege by a nonparty only upon a showing that the requested material is: (1)
7 unavailable despite exhaustion of all reasonable alternative sources; (2)
noncumulative; and (3) clearly relevant to an important issue in the case. We
note that there must be a showing of actual relevance; a showing of potential
relevance will not suffice.

8 *Shoen*, 48 F.3d at 416.

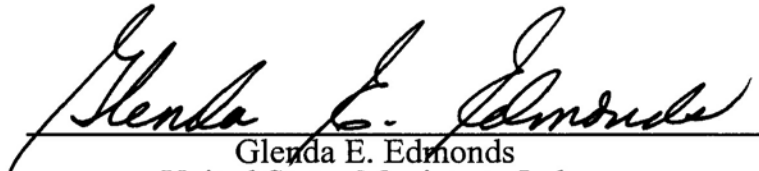
9 The instant subpoena does not address the *Shoen* factors. (Motion to Quash, Exhibit
10 A.) Moreover, Gonzales has not filed a response to the motion. Accordingly, the court may
11 assume he consents to the granting of the motion. LRCiv. 7.2(i).

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13 IT IS ORDERED that the motion to quash subpoena duces tecum filed by KTVK-TV
14 and Executive News Director Scott Diener on April 11, 2006, is GRANTED. [doc. # 41]

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16 The Clerk of the Court is instructed to send a copy this order to the plaintiff,
17 defendants and movants.

18 DATED this 2nd day of May, 2006.

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Glenda E. Edmonds
United States Magistrate Judge